

Remarks/Arguments

These remarks/arguments are responsive to the August 10, 2005 Office Action and were necessitated by the Examiner's reliance upon new art in rejecting the claims.

As an initial matter, applicant once again requests that the Examiner correct the spelling of applicant's name in the correspondence address. Three times now the correspondence has been addressed to "Ricahrd" Lehrer instead of Richard Lehrer. This is even after applicant pointed out the error to the Examiner in the previous Response.

More substantively, applicant respectfully points out that the Examiner has still failed to provide a bona fide response to applicant's November 29, 2004 response to the improper October 28, 2004 restriction requirement. The Examiner has also improperly misrepresented applicant's statements made in the November 29, 2004 response. In response to the restriction requirement, applicant requested the examiner to reconsider and withdraw the restriction requirement, or at the very least to state his reasons for the restriction and to identify the claims and claim elements in accordance with the requirements of the M.P.E.P. Applicant also provisionally elected Group 1 and all claims readable thereon. In the present office action and in the previous office action, the Examiner makes no mention of either of these facts but instead misrepresents that applicant asserted that every claim reads on Group 1. Applicant never made such an assertion.

Improper Restriction Requirement

In the October 28, 2004 Office Action, the Examiner required applicant to elect a single disclosed species for prosecution under 35 U.S.C. § 121.

According to the Examiner the application contains claims (unspecified by the Examiner) directed to the following patentably distinct species (unspecified why patentably distinct) of the claimed invention:

- Group 1: figures 1-4;
- Group 2: figure 5;
- Group 3: figure 6;
- Group 4: figure 7;
- Group 5: figure 8;
- Group 6: figure 9;
- Group 7: figure 10;
- Group 8: figure 11;
- Group 9: figure 12;
- Group 10: figure 13;
- Group 11: figure 14; and,
- Group 12: figure 15.

However, the Examiner failed to (1) identify the claims which were allegedly patentably distinct and (2) state any reasons for the Examiner's assertion, both of which are required by the MPEP and both of which were pointed out by the applicant in the response filed November 29, 2004.

As stated in applicant's November 29, 2004 Response and again in the May 23, 2005 Response, it is the Examiner's burden to identify which claims are directed to different species and in particular to identify which elements of the claims are considered to restrict the claims to a particular disclosed species to make the requirement clear. (*see*

M.P.E.P. §§814-817). According to M.P.E.P. §816, “the particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated.” In the October 28, 2004 office action, the Examiner failed to state which claims are believed to be directed to different species. Instead the Examiner only provided conclusory statements that the application contains claims directed to patentable distinct species identified by the various figures. The Examiner has failed to even provide an indication as to why the figures illustrate patentably distinct species. The examiner then attempts to improperly shift the burden of identifying the claims to applicant by stating “applicant is advised that a reply to this requirement must include an identification of the species that is elected . . . and a listing of all claims readable thereon. . .” This attempt to shift the burden is improper and applicant respectfully holds the Examiner to his burdens of identifying the claims and why the Examiner believes they are directed to patentably distinct species.

Clearly the restriction requirement was inadequate and applicant respectfully requests Examiner to reconsider and withdraw the restriction requirement.

In addition to the restriction requirement, the Examiner incorrectly stated that currently no claim is generic. Simply to illustrate that the Examiner’s statement was incorrect, applicant pointed out that Claim 1 was generic to all of the figures. This was by no means an exhaustive list. In fact, a review of the claims reveals that at the very least the independent claims (Claims 1, 12 and 17) are each generic to all of the figures. Additionally, a closer review reveals that dependent claims 10 and 11 are also generic to all of the figures.

Once again, applicant respectfully requests the Examiner to abide by the rules of the M.P.E.P. and reconsider and withdraw his incomplete and improper restriction requirement or at the very least to provide the claims he asserts are patentably distinct and the reasons for such assertions.

Drawings

In the February 23, 2005 Office Action, the Examiner objected to the drawings for not showing the slit on the top or bottom with the connector configured to extend through the slit. In response, on May 23, 2005 Applicant provided new figures 16 and 17 illustrating an example of the requested features respectfully. In the most recent office action (August 8, 2005), the Examiner disapproved of the drawings incorrectly asserting that these drawings now have new matter (i.e. the slits 60). Specifically, the Examiner asserts that since the disclosure does not teach the specific location of the slit 60 that it must be new matter. This is clearly absurd and applicant respectfully requests Examiner to reconsider this assertion and enter the new drawings. A patent is not a manufacturing specification and need not provide every specific location and every specific detail of an invention, so long as one skilled in the art would be able to understand the invention without undue experimentation. In the present situation, the specification clearly states "Preferably, as illustrated in Figs. 6-8 the tabs on the lid portion of the box should include a cutout portion so as not to interfere with the pull tab 50 when the box is closed. Although, those skilled in the art will recognize that the pull tab 50 could be configured in such a way that the tabs need not be cut, such as if the pull tab 50 is pulled **through the bottom or top of the box 10** or near the bottom of a side of the box 10." (pg. 9, ll. 8-13) (Emphasis added). Clearly there are various locations in the top or the bottom of the

box where the slit 60 could be placed and the location shown in figures 16 and 17 are merely exemplary and clearly disclosed (i.e. are not new matter). Accordingly, the Examiner's assertion that the exact location of the slit is new matter is simply preposterous and unsupportable. No new matter has been added as these drawings are supported by original claims 5 and 6 as indicated by the Examiner and by the specification at pg. 9, lns. 10-16. Accordingly, the Examiner is respectfully requested to reconsider and withdraw his disapproval of the drawings.

Accordingly, applicant respectfully submits that the objections to the drawings have been overcome and the Examiner should withdraw the same.

35 U.S.C. §102(b)

In the August 10, 2005 Office Action, the Examiner rejected claims 1, 3, 8, 10 and 11 as being anticipated by U.S. Patent No. 1,049,910 to Peck ("Peck") or in the alternative, over Peck in view of U.S. Patent No. 1,545,487 to Croft ("Croft"). Applicant reasserts the reasons stated in his previous Response as to why Peck does not invalidate these claims. The same reasoning can be equally applied to Croft. However, for the purpose of speeding this case to allowance, applicant has amended independent Claims 1 and 12 to include that the connector is integral with at least one of the ribs. In addition to the other reasons why the art cited by the Examiner does not invalidate these claims, none of the art cited by the Examiner includes this feature. This is apparent from the fact that the Examiner has indicated the allowability of Claim 17, which includes a similar feature. As such, neither Peck nor Croft nor the combination invalidates these claims and the Examiner is respectfully requested to reconsider and withdraw the rejections to Claims 1 and 12.

Claims 3-6, 8, 10 and 11 depend from Claim 1. Accordingly, these claims are novel over Peck, Croft and the combination thereof for at least the reasons discussed above.

35 U.S.C. §103(a)

In the August 10, 2005 Office Action, the Examiner rejected Claims 12 and 13 as being unpatentable over Peck in view of either U.S. Patent No. 1,083,514 to Wright ("Wright") or 861,899 to Rhodes ("Rhodes"). According to the Examiner, it would have been obvious to one of ordinary skill in the art to lock the connector against an outside of the box either by tying the string as shown in Rhodes or providing anchor 12 as shown in Wright to keep the ribs from folding back.

Applicant respectfully traverses these rejections for the reasons stated in the May 23, 2005 Response. Additionally, Claim 12 has been amended as discussed above and Claim 13 depends from Claim 12. Accordingly, Claims 12 and 13 are not rendered obvious by Peck, Wright, Rhodes or any combination thereof and the Examiner is respectfully requested to reconsider and withdraw these rejections.

In the August 10, 2005 Office Action, the Examiner rejected Claims 1, 3, 4, 8 and 10 as being unpatentable over U.S. Patent No. 4,927,073 to Esposito ("Esposito") in view of U.S. Patent No. 4,081,125 to Meyers ("Meyers"). Applicant respectfully traverses these rejections for the reasons stated in the May 23, 2005 Response. Additionally Since Claims 1 and 12 have been amended as discussed above to include another feature not disclosed by any of the art cited by the Examiner, these Claims are patentable over the cited references and combinations of references. The Examiner is respectfully requested to reconsider and withdraw his rejection of Claim 1.

Claims 3, 4, 8 and 10 depend from Claim 1. As such, these claims are not rendered obvious for the same reasons.

Objections

Claim 2 was objected to as being dependent upon a rejected base claim. As shown from the foregoing discussion of the claims and cited art, Claim 1 is novel over the cited art. As such, applicant respectfully requests the Examiner to reconsider and withdraw the objection to Claim 2.

No new matter has been added.

Summary of Interview with Examiner in Accordance with 37 C.F.R. §1.133(3)(b)

On or about September 20, 2005 applicant had a telephonic interview with the Examiner at which time claims 1, 12 and 17 were discussed. The Examiner agreed to allow the claims over the cited art if the applicant amended claims 1 and 12 to include the following exact language from claim 17: “wherein the horizontal cuts form a plurality of rib/base pairs and the vertical cuts form a pull tab coupled to the plurality of rib/base pairs only by the ribs”. Applicant is grateful to the Examiner for his courtesy and suggestion during the interview; however, feels that the exact language does not properly fit into the remainder of the claims and thus has respectfully reconsidered the Examiner’s suggestion and amended the claims in such a way that provides additional novel features without providing the exact suggested language.

This response attends to each point noted by the Examiner. The claims are proper and patentable. Allowance is respectfully requested. However, should the Examiner deem that further clarification of the record is in order, we invite a telephone call to the

applicant prior to the issuance of the next office action to expedite further processing of the claims to allowance.

Dated: December 12, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard M. Lehrer", is written over a horizontal line.

Richard M. Lehrer

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